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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-387

JOSHUA ALEXANDER NAVARRO
5475 Lindsey Lane
Cypress, CA 90630

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.
2. On or about March 15, 2007, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner license from Joshua Alexander Navarro (Respondent). On or about March 11, 2007, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 3, 2007. On or about August 13, 2007, Respondent requested a hearing to contest the denial of his application for licensure as a Respiratory Care Practitioner.

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states, in pertinent part:

". . . ."

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states, in pertinent part:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

". . . ."

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

". . . ."

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1 8. Section 3750.5 of the Code states, in pertinent part:

2 "In addition to any other grounds specified in this chapter, the board may
3 deny, suspend, or revoke the license of any applicant or license holder who has done any
4 of the following:

5 "(a) Obtained or possessed in violation of law, or except as directed by a
6 licensed physician and surgeon, dentist, or podiatrist administered to himself or
7 herself, or furnished or administered to another, any controlled substances as
8 defined in Division 10 (commencing with Section 11000) of the Health and Safety
9 Code, or any dangerous drug as defined in Article 2 (commencing with section
10 4015) of Chapter 9.

11 ". . . ."

12 9. Section 492 of the Code states:

13 "Notwithstanding any other provision of law, successful completion of any
14 diversion program under the Penal Code, or successful completion of an alcohol and drug
15 problem assessment program under Article 5 (commencing with section 23249.50) of
16 Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established
17 under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any
18 initiative act referred to in that division, from taking disciplinary action against a licensee
19 or from denying a license for professional misconduct, notwithstanding that evidence of
20 that misconduct may be recorded in a record pertaining to an arrest.

21 "This section shall not be construed to apply to any drug diversion program
22 operated by any agency established under Division 2 (commencing with Section 500) of
23 this code, or any initiative act referred to in that division."

24 10. California Code of Regulations (CCR), title 16, section 1399.370,
25 states, in pertinent part:

26 "For the purposes of denial, suspension, or revocation of a license, a crime
27 or act shall be considered to be substantially related to the qualifications, functions
28 or duties of a respiratory care practitioner, if it evidences present or potential

1 unfitness of a licensee to perform the functions authorized by his or her license or
2 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
3 acts shall include but not be limited to those involving the following:

4 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
5 abetting the violation of or conspiring to violate any provision or term of the Act.

6 “”

7 **COST RECOVERY**

8 11. Section 3753.5, subdivision (a) of the Code states:

9 "In any order issued in resolution of a disciplinary proceeding before the
10 board, the board or the administrative law judge may direct any practitioner or applicant
11 found to have committed a violation or violations of law to pay to the board a sum not to
12 exceed the costs of the investigation and prosecution of the case."

13 12. Section 3753.7 of the Code states:

14 "For purposes of the Respiratory Care Practice Act, costs of prosecution
15 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
16 other administrative, filing, and service fees."

17 13. Section 3753.1, subdivision (a), of the Code states:

18 "An administrative disciplinary decision imposing terms of probation may
19 include, among other things, a requirement that the licensee-probationer pay the monetary
20 costs associated with monitoring the probation."

21 **CAUSE FOR DENIAL OF APPLICATION**

22 **(Possession of a controlled substance)**

23 14. Respondent's application is subject to denial under sections 3732,
24 subdivision (b), 3750.5, subdivision (a), 3750, subdivision (g), as defined by 3750.5 of the
25 Code, 492, and CCR, title 16, section 1399.370, subdivision (a), in that Respondent was in
26 possession of a controlled substance, marijuana. The circumstances are as follows:

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28 ///

1 May 4, 2005 arrest

2 a. On or about May 4, 2005, while sitting in his vehicle,
3 Respondent was approached by Los Alamitos Police Officer Milan. Officer
4 Milan asked Respondent whether he had ever been arrested and Respondent
5 answered, “Yes, for smoking marijuana while driving.” Officer Milan
6 further questioned Respondent asking whether Respondent had any
7 marijuana in the car and Respondent stated that he had a little bit. Upon a
8 search of Respondent and his vehicle, Officer Milan found marijuana in
9 Respondent’s pocket and a clear plastic container of marijuana inside the
10 console of Respondent’s vehicle. Respondent told Officer Milan that he
11 had a medical marijuana prescription from a physician in Lake Forrest and
12 that he obtained the prescription so marijuana wouldn’t be illegal anymore.
13 Respondent was issued a Citation #LA66833 for being in possession of
14 marijuana pursuant to Vehicle Code section 23222, subdivision (b).

15 b. On or about May 27, 2005, in Orange County
16 Superior Court, Respondent was charged with one count of violating Health
17 and Safety Code section 11357, subdivision (b) [possession of under one
18 ounce of marijuana].

19 c. On or about June 22, 2005, the Court ordered
20 Respondent to attend and complete Sentencing Concepts, Inc.

21 d. On or about September 13, 2005, Respondent
22 showed proof to the Court of successfully completing Sentencing Concepts,
23 Inc., and the case was dismissed.

24 June 4, 2004 arrest

25 e. On or about June 4, 2004, Respondent was arrested
26 for violating Health and Safety Code section 11359 [possession of
27 marijuana for sale].

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1 f. On or about June 10, 2004, a complaint was filed in
2 Superior Court of California, County of Los Angeles, charging Respondent
3 with one count of violating Health and Safety Code section 11357,
4 subdivision (b) [possession of under one ounce of marijuana].

5 g. On or about July 6, 2004, the Court ordered Respondent to
6 complete a one-day drug program.

7 h. On or about August 5, 2004, Respondent showed
8 proof to the Court of completing the alcohol and drug awareness program,
9 and the case was dismissed.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters
12 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

13 1. Denying the application of JOSHUA ALEXANDER NAVARRO
14 for a Respiratory Care Practitioner's License;

15 2. Directing Joshua Alexander Navarro to pay the Respiratory Care
16 Board of California the costs of the investigation and enforcement of this case, and if
17 placed on probation, the costs of probation monitoring;

18 3. Taking such other and further action as deemed necessary and
19 proper.

20
21 DATED: October 11, 2007

22
23 Original signed by Liane Zimmerman for:
24 STEPHANIE NUNEZ
25 Executive Officer
26 Respiratory Care Board of California
27 Department of Consumer Affairs
28 State of California
Complainant